

Bumps on the Roadmap towards the Republic of Northern Macedonia?

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Greece and the Republic of Macedonia are one step closer to re-naming R. Macedonia into the “Republic of Northern Macedonia” or “Republic of Upper Macedonia”. On 28 May 2018, the Foreign Ministers of both countries have announced significant progress towards the bilateral treaty regarding the name issue. At the same time, a road map for the name change of the Republic of Macedonia was announced that includes a binding referendum by the Macedonian people. But what happens if the treaty is already signed and binding, and the people of Macedonia vote against the name change in the referendum?

Such a blockade would set back R. Macedonia’s efforts to accede NATO and open accession talks with the EU which were the main motives for the Macedonian government to agree to the name change demanded by Greece.

According to the well-informed Greek media, the agreement concerns the renaming of the Republic of Macedonia into the “Republic of Northern Macedonia” (more likely), or “Republic of Upper Macedonia” (less likely) for all purposes, domestic and international. This is practically the full acceptance of the Greek package proposed before the NATO

Summit in Bucharest in 2008. Greece received unanimous support of the NATO Allies and the EU Member States for such a proposal, although it breached the Interim Accord of 1995 by objecting to R. Macedonia's accession in NATO and EU, in order to get leverage in the negotiations on the name issue. But it took a whole decade for Greece to impose its own solution. Faced with this situation, the Macedonian government decided that it would cease to oppose the Greek proposal to change its name, and would no longer rely on the ICJ's judgment of 5 December 2011, which declared Greece's veto on extending an invitation for R. Macedonia's accession to NATO to be in breach of Article 5 of the Greek-Macedonian Interim Accord of 13 September 1995. It merely obeyed Greece's terms, and proceeded towards picking of one of the names on the menu proposed by Greece.

According to the Macedonian Prime Minister Zaev, the roadmap includes several steps for implementing the new name in the Macedonian constitutional system. First, the treaty would be subject to ratification in the parliaments of both countries. After the ratification (and entry of the treaty into force), the second step would be that the Greek Government would send a letter to the NATO and EU members stating that it agrees with extending an invitation to Republic of Macedonia to accede to NATO and to start EU accession negotiations. The third step would be a referendum in Republic of Macedonia. And the fourth and final step would be adopting the constitutional amendments by the Macedonian Parliament, which would make the renaming of the country into the "Republic of North/Upper Macedonia" functional. The expected outcome would be that the country can accede to NATO and open the EU accession negotiations under the new name.

While the steps two and four are clear and create no problems in implementation, steps one and three might be a source of controversies. It remains unclear what the purpose of the referendum in Republic of Macedonia would be. According to the public statements of the Prime Minister Zaev, it will be a decisive referendum with binding results. This contradicts the announced road map, mainly because the roadmap only foresees the ratification by the two national parliaments as a condition for the bilateral treaty to enter into force, not the referendum. The referendum is envisaged as a step three, only after the ratification is performed by the two parliaments and after the subsequent Greek communication to NATO and EU of its consent to the accession of the renamed state as step two. Therefore, under the agreed roadmap, the referendum is not a condition for the entry into force of the bilateral treaty on the new name.

As a consequence, the results of the referendum would have no impact on the validity and entry into force of the bilateral treaty on the new name. Even if the referendum fails, the bilateral treaty would remain in force and will be binding on the two countries. A failed referendum would only lead to inability of the Macedonian side to implement its commitments under the bilateral treaty. It would then turn into an obstacle for implementing the step four of the road map: the amendments of the constitution. Those amendments are needed in order to have the result of *de iure* renaming of the country. Without the constitutional amendment passed, the situation would be that Republic of Macedonia would have a valid commitment under international law to rename itself as agreed with Greece, but it would still not be renamed. The Vienna Convention on the Law of International Treaties of 1969, to which both of the countries are members, provides that the consent of a State to be bound by a treaty is expressed by ratification, among others, when the treaty

provides for such consent to be expressed by means of ratification or where the representative of the State has signed the treaty subject to ratification (Article 14).

Therefore, the bilateral treaty would create a commitment for Republic of Macedonia to rename itself, but the constitutional amendment is needed as a legal act that would implement the *de iure* renaming. On top of that, by entry into force of the bilateral agreement, the Republic of Macedonia would commit to join NATO and EU only under the new name agreed with Greece.

Another issue that needs to be considered: under the Macedonian Law on referendum, the Parliament would only be able to call for a referendum on the bilateral treaty on the new name as a preliminary referendum (*ex ante* referendum). It cannot be organized as an *ex post* referendum because Article 24 Paragraph 1 of the Macedonian Law provides that “a referendum may be organised on a national level also for the need of ratification of international treaties ... (preliminary referendum)”. As announced by Prime Minister Zaev, it will be a referendum with binding effect, and not a consultative one (which would not be binding). The organisation of the referendum and the other procedural issues are regulated by the Law on referendum of 2005, and will not be dealt with in detail in this text. However, the announced roadmap provides for a binding referendum *after* the ratification of the bilateral treaty by the Macedonian Assembly, and as such it contravenes the Macedonian Law on referendum.

Therefore, it may be concluded that the referendum as a third step of the roadmap in the bilateral treaty on the name is impossible to be implemented, due to the fact that its implementation contravenes domestic Macedonian law. In order to achieve a viable roadmap, it would be advisable to undertake one of the two possible options: a) to amend the Macedonian Law on Referendum by allowing an *ex post* referendum on the need for ratification of international treaties or b) to provide for a new roadmap in the bilateral treaty on the new name of the state, which would include a different first step – a “preliminary referendum” in the Republic of Macedonia on the need for ratification of the bilateral treaty. If the Government decides on the second option, a new road map will be needed, whereby the present step one would drop out. In that way, a road map with only three steps towards implementing the new name would be agreed upon: step one – a referendum on the ratification of the concluded bilateral treaty on the new name, step two – extending written communications by Greece to the NATO and EU Members that it lifts the veto, and step three – adopting the amendments of Macedonian Constitution on renaming the country into Republic of Northern/Upper Macedonia.

Concerning the final step of the road map – amending the Constitution in order to rename the country, the situation is quite clear. The decision to initiate a change in the Constitution is made by the Parliament by a two-thirds majority vote of the total number of MPs. The only problem in implementing this step is the need to obtain the two thirds majority of votes; meaning 80 votes out of 120 MPs. The present Government enjoys the support of 68 members of the Parliament. It will have to request support from the largest opposition party – VMRO DPMNE. Having in mind that VMRO-DPMNE firmly opposes any changes in the Constitution in order to rename the country, and that they repeated this position once again at their rally in Skopje held on the 2nd of June 2018, such an attempt seems to be doomed.

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